IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 361 of 2007

Judgement reserved on:

Date of decision: 18.9.2007.

State of H.P. **…..Petitioner- Appellant.**

Vs.

Sanjeev Kumar **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : **Mr. M.L.Chauhan, Addl. Advocate General.**

For the Respondents : **Mr. Ankush Dass Sood, Advocate.**

Kuldip Singh, Judge (Oral).

This is an application of the State for grant of leave to file an appeal against judgement, dated 29.1.2007, passed by the learned Judicial Magistrate Ist Class, Court No.1, Hamirpur, in Police Challan No. 16-1-2004, acquitting the respondent, for the offence, under Sections 279, 337 and 338 IPC.

2. The brief facts are that on 12.10.2003 at about 9.30 a.m. complainant Kamal Jeet Singh (PW 2) alongwith Roshan Lal (PW 3) were going on motor cycle No. DL-ISG-2401, at place Dehrian, motor cycle was hit by the bus bearing registration No. CH-0I9-5204, which was coming from Sujanpur side at a high speed. The motor cycle fell down and Kamal Jeet Singh as well as pillion rider sustained injuries. The matter was reported to the Police. An FIR No. 95 of 2003 was

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Whether the reporters of the local papers may be allowed to see the Judgment?

registered at Police Station, Sujanpur, on 12.10.2003. After completion of investigation, challan was put up against the respondent for having committed an offence, under Sections 279, 337 and 338 IPC. Notice of accusation was put to accused, who pleaded not guilty and claimed trial. The prosecution examined six witnesses. The respondent- accused in his statement, under Section 313, Cr.P.C. denied the case of the prosecution and pleaded that he is innocent. No evidence in defence was led. The learned Judicial Magistrate acquitted the respondent, as noticed above. The State has filed the application for leave to file appeal.

3. Heard. PW 1 HHC Ranjit Singh has stated that he issued mechanical reports of the bus and the motor cycle Ex. PW 1/A and Ex. PW 1/B, but he did not visit the spot. PW 2 Kamal Jeet Singh has stated that he was riding the motor cycle alongwith pillion rider Roshan Lal, at place Dehrian, CTU Bus came and struck against his motor cycle, as a result of which he and Roshan Lal fell down and sustained injuries. The bus driver took him to Hamirpur hospital. He has stated that accident took place due to the negligence of the respondent. According to him, there were ten to twelve passengers in the bus. The police did not record the statement of any of the passengers travelling in the bus and conductor of the bus. The police did not get the spot identified from him. PW 3 Roshan Lal could not say who was driving the bus at the time of accident. This witness has admitted that bus was coming uphill while the motor cycle was going downhill. In site plan Ex. PW 6/A, the motor cycle has been shown behind the bus. The site plan

Ex. PW 6/A does not support the version of PW 2 and PW 3 that the accident took place when the bus struck the motor cycle.

4. The prosecution witnesses have not stated that bus was on the wrong side. The allegation against the bus driver is that he was driving the bus in a rash and negligent manner, meaning thereby at a high speed. The bus was going uphill. PW 3 Roshan Lal has stated that there were 30 to 35 passengers in the bus. The bus with 30 to 35 passengers going uphill is not expected to move at a high speed. PW 2 Kamal Jeet Singh has stated that he had seen the bus coming from a distance of 200 to 300 meters. The motor cycle rider having noticed the bus coming from opposite side from a distance of 200 to 300 meters should have been more careful while going downhill. Only Kamal Jeet Singh and Roshan Lal have supported the prosecution case, but they are interested witnesses. The prosecution has not examined Rajesh Kumar and Prithi Chand, witnesses. As per PW 3 Roshan Lal, his statement was recorded by the police after two weeks of the accident. PW 6 Braham Dass, Investigating Officer has stated that on 12.1.2003, he recorded the statement of the complainant, under Section 154 Cr.P.C. on the spot, but the other version, as per prosecution case is that statement of the complainant was recorded in the hospital.

5. The learned Judicial Magistrate has considered the material on record and has taken a possible view. This is not a fit case for grant of leave to file an appeal. Hence, the leave is rejected.

September 18, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**